100th Congress, 1st Session - - - - - - - - - - House Document 100-66

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND SPAIN ON SOCIAL SECURITY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND SPAIN ON SOCIAL SECURITY WHICH CONSISTS OF TWO SEPARATE INSTRUMENTS, PURSUANT TO 42 U.S.C. 433(e)(1)

APRIL 22, 1987.—Message and accompanying papers referred to the Committee on Ways and Means and ordered to be printed

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To the Congress of the United States:

Pursuant to Section 233(e)(1) of the Social Security Act, as amended by the Social Security Amendments of 1977 (P.L. 95–216, 42 U.S.C. 433(e)(1)), I transmit herewith the Agreement between the United States of America and Spain on Social Security which consists of two separate instruments. The Agreement was signed at Madrid on September 30, 1986.

The U.S.-Spain Agreement is similar in objective to the social security agreement already in force with Belgium, Canada, the Federal Republic of Germany, Italy, Norway, Sweden, Switzerland, and the United Kingdom. Such bilateral agreements provide for limited coordination between the United States and foreign social security systems to overcome the problems of gaps in protection and of dual coverage and taxation for workers who move from one country to the other.

I also transmit for the information of the Congress a comprehensive report prepared by the Department of Health and Human Services, which explains the provisions of the Agreement and provides data on the number of persons affected by the Agreement and the effect on social security financing as required by the same provision of the Social Security Act.

The Department of State and the Department of Health and Human Services join with me in commending the U.S.-Spain Social Security Agreement and related documents.

RONALD REAGAN.

THE WHITE HOUSE, *April 21, 1987.*

AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND SPAIN
ON SOCIAL SECURITY

The United States of America and Spain,

Being desirous of regulating the relationship between their two countries in the field of Social Security, have agreed as follows:

PART I

General Provisions

Article 1

1. For purposes of this Agreement, the expressions and terms listed below shall have the following meaning:

(1) "Contracting State" means the United States of America or Spain;

(2) "Territory" means,

as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa, and,

as regards Spain, the Spanish national territory;

(3) "National" means,

as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended, and,

as regards Spain, a national of Spain as defined in Title I of Book I of the Spanish Civil Code;

(4) "Laws" means the laws and regulations specified in Article 2 which are in force in the territory of either Contracting State;

(5) "Competent Authority" means,

as regards the United States, the Secretary of Health and Human Services, and,

as regards Spain, the Ministry of Labor and Social Security;

(6) "Agency" means,

as regards the United States, the Social Security Administration, and,

as regards Spain, the agency or authority responsible for applying the laws specified in Article 2, paragraph 1, subparagraph A;

(7) "Liaison Agency" means,

as regards the United States, the Social Security Administration, and,

as regards Spain, the agency in charge of coordinating the organizations involved in the application of this Agreement;

(8) "Period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;

(9) "Benefit" means any cash amount payable under the laws specified in Article 2.

2. Any other expression or term used in both this Agreement and the laws of a Contracting State shall, for that Contracting State, have the same meaning as under those laws.

Article 2

1. The present Agreement shall apply :

A. As regards Spain,

(1) to the legal provisions of the General System of Social Security as they relate to:

(a) Provisional or permanent disability due to ordinary illness or non-work-related injury.

(b) Old age.

(c) Death and Survivorship due to ordinary illness or nonwork-related injury.

(2) to the legal provisions of the following Special Systems with respect to the contingencies referred to in subparagraph A, clause (1):

(a) Agricultural Workers.
(b) Maritime Workers.
(c) Coal Miners.
(d) Railroad Workers.

(e) Domestic Employees.
(f) Self-employed Persons.
(g) Commercial Representatives.
(h) Students.
(i) Artists.
(j) Authors.
(k) Bullfighters.
(l) Professional Soccer Players.

B. As regards the United States of America,

to the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:

(1) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections.

(2) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1954 and regulations pertaining to those chapters.

2. This Agreement shall apply also to future laws which supplement or amend the laws specified in the preceding paragraph.

Article 3

1. Unless otherwise provided, this Agreement shall apply to:

(a) Persons who are or have been subject to the laws of one or both of the Contracting States.

(b) Other persons with respect to the rights they derive from the persons mentioned in subparagraph (a).

2. A person who is or has been subject to the laws of a Contracting State and who resides within the territory of the other Contracting State shall, together with his dependents, receive equal treatment with the nationals of the other Contracting State in the application of laws specified in Article 2 of the other Contracting State regarding entitlement to and payment of benefits.

3. Unless otherwise provided in this Agreement, any provision of the laws of a Contracting State which restricts entitlement to or payment of cash benefits solely because the person resides outside or is absent from the territory of that Contracting State shall not be applicable to the persons who reside in the territory of the other Contracting State.

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PART II

Provisions on Coverage

Article 4

1. Except as otherwise provided in this Part, a person employed within the territory of one of the Contracting States shall, with respect to that employment, be subject to the laws of only that Contracting State.

2. A person who would otherwise be covered under the laws of both Contracting States with respect to self-employment shall be subject to the laws of only the Contracting State of which he is a resident.

Article 5

1. Where a person who is covered under the laws of one Contracting State in respect of work performed for a firm in the territory of that Contracting State is sent by that firm to work in the territory of the other Contracting State, the person shall be subject to the laws of only the first Contracting State as if he were employed in its territory, provided that the period of work in the territory of the other Contracting State is not expected to exceed five years. If the period of work is prolonged due to unforeseen circumstances for more than five years, the laws of the first Contracting State shall continue to apply for a new period of not more than one year, provided that the Competent Authority of the other Contracting State has given its consent. This extension must be requested before the termination of the initial period of five years.

2. Traveling employees of air transportation companies who perform work in the territories of both Contracting States and who would otherwise be covered under the laws of both Contracting States shall, with respect to that work, be subject to the laws of only the Contracting State in the territory of which the firm has its home office. However, if such employees reside in the territory of the other Contracting State, they shall be subject to the laws of only that State.

3. A person employed as an officer or member of a crew on a vessel which flies the flag of one Contracting State and who would otherwise be covered under the laws of both Contracting States shall be subject to the laws of only the Contracting State whose flag the vessel flies. A vessel which flies the flag of the United States is one defined as an American vessel under the laws of the United States.

Article 6

1. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

2. Nationals of one of the Contracting States who are employed by the Government of that Contracting State in the territory of the other Contracting State but who are not exempt from the laws of the other Contracting State by virtue of the Conventions mentioned in paragraph 1 shall be subject to the laws of only the first State. For the purposes of this paragraph, employment by the United States Government includes employment by an instrumentality thereof.

Article 7

The Competent Authorities of the two Contracting States may agree to grant an exception to the provisions of Articles 4, 5 and 6 with respect to any person or category of persons.

Article 8

In determining eligibility for voluntary or optional coverage in accordance with Spanish laws, periods of coverage completed by a person under United States laws shall be considered as periods of coverage completed under Spanish laws if the person fulfills the other requirements provided in Spanish laws.

PART III

Special Provisions on Benefits

Chapter I
Application of Spanish Laws

Article 9

Where a worker has been subject to the laws of both Contracting States, benefits shall be granted under the following conditions:

1. If the person satisfies the conditions required by Spanish laws for a right to benefits, the Spanish agency shall determine the amount of the benefit according to the laws which it applies taking into account only the periods of coverage completed under its laws.

2. If the person does not satisfy the period-of-coverage requirements under Spanish laws, the benefits which he may claim shall be paid according to the following rules:

   (a) The periods of coverage completed under each of the laws of the two Contracting States, as well as the periods recognized as equivalent, shall be totalized, provided they do not coincide, both for the determination of the right to benefits as well as for the maintenance or recovery of this right.

   (b) Taking into account the totalization of periods as described above, the Spanish agency shall determine, in accordance with its own laws, if the person meets the requirements for a benefit.

   (c) If a right to a benefit is acquired, the amount shall be determined as if all the periods of coverage, totalized according to the rules established in subparagraph (a), had been completed exclusively under its own laws (theoretical pension). When the amount of the theoretical pension thus determined is less than the minimum pension provided at that time under Spanish laws, such minimum shall be considered as the theoretical pension.

   (d) The amount of the benefit actually due the person shall be established by reducing the amount determined in subparagraph (c) based on the ratio of the periods of coverage completed under Spanish laws to the total of the periods totalized according to subparagraph (a) (pro rata pension).

3. Periods of coverage shall be totalized under this Article according to the following rules:

   (a) A quarter of coverage under United States laws shall equal 91 days of contributions under Spanish laws.

   (b) The periods of coverage resulting from the preceding conversion shall not be totalized under Spanish laws to the extent they coincide with periods of contributions under Spanish laws.

Article 10

1. For purposes of the application, where appropriate, of the principle of totalization, if the total duration of the periods of coverage acquired under Spanish laws is less than 1 year, and if, taking into account only those periods, no right to benefits is derived under such laws, the Spanish agency shall not grant benefits based on such periods.

2. The provisions of paragraph 1 shall not apply if a right to benefits under Spanish laws may be acquired by totalizing periods of coverage of less than 1 year in both Contracting States.

3. When it is not possible to determine the time when specific periods of coverage were completed under the laws of one of the Contracting States, it shall be presumed that such periods do not coincide with periods of coverage completed under the laws of the other Contracting State.

Article 11

1. If Spanish laws establish as a condition for the award of certain benefits that periods of coverage be completed in a profession subject to a special system or in a specific profession or occupation, the periods completed under the laws of the other Contracting State shall not be taken into account for the awarding of these benefits unless those periods were completed under a corresponding system or, failing that, in the same profession or occupation.

2. If, taking into account the periods thus completed, the interested person does not meet the required conditions for entitlement to these benefits, these periods shall be taken into account for the awarding of benefits under the general system.

Article 12

1. Benefits awarded in accordance with this Chapter shall be revalued with the same frequency and in the same amount as provided in Spanish internal laws.

2. Pro rata pensions referred to in Article 9, paragraph 2(d), shall be converted by reducing the amount of the revaluation according to the same rule of proportionality cited in that Article.

Article 13

In order to determine the extent of a worker's disability, the Spanish agency shall take into account medical reports and administrative data forwarded by the agency of the other Contracting State. Nevertheless, that agency shall have the right to arrange for the worker to be examined by a physician of its choice.

Article 14

1. To obtain a benefit in the cases set forth in Article 9, paragraph 2, the requirement of Spanish laws that a person be in a situation deemed equivalent to registered (situacion asimilada al alta) shall be considered to have been met if the person concerned is covered under United States laws or is in receipt of a benefit in accordance with United States laws.

2. For purposes of paragraph 1, a person shall be considered to be covered under United States laws if the person is insured for a benefit under such laws or has credit for at least 1 quarter of coverage under such laws during a period of 12 calendar quarters ending with the calendar quarter in which the insured event occurs according to Spanish laws.

Article 15

1. In calculating the benefit computation base, the Spanish agency shall apply its own laws.

2. When all or part of the contributory period elected by the applicant for the calculation of his benefit computation base has been completed under United States laws, the Spanish agency shall determine the aforementioned computation base by reference to the minimum contribution base in force in Spain during that period or fraction thereof, for workers of the same occupational or professional category to which the person concerned belonged while in Spain.

Article 16

The lump-sum death benefit provided by Spanish laws shall be granted solely on the basis of those laws and in conformity with the requirements and conditions of those laws.

Chapter II

Application of United States Laws

Article 17

1. Where a person has sufficient quarters of coverage under United States laws to satisfy the requirements for entitlement to benefits, the agency of the United States shall determine the amount of the benefit according to the laws which it applies taking into account only the quarters of coverage completed under its laws.

2. Where a person does not have sufficient quarters of coverage to satisfy the requirements for entitlement to benefits under United States laws, including a lump-sum death benefit, but has completed at least six quarters of coverage under United States laws, the agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Chapter, periods of coverage which are credited under Spanish laws and which do not coincide with periods of coverage already credited under United States laws.

3. In determining eligibility for benefits under paragraph 2 of this Article, the agency of the United States shall credit one quarter of coverage in each calendar year for every 91 days of contributions in that calendar year certified by the agency of Spain. If the conversion provided in the preceding sentence produces a remainder, that remainder shall be treated as one additional quarter of coverage. However, no quarter of coverage shall be credited under this paragraph for any calendar quarter already credited as a quarter of coverage under United States laws, nor shall the total number of quarters of coverage to be credited for a year exceed four.

4. When it is not possible to determine the time when specific periods of coverage were completed under the laws of one of the Contracting States, it shall be presumed that such periods do not coincide with periods of coverage completed under the laws of the other Contracting State.

Article 18

Entitlement to a benefit under United States laws which results from Article 17, paragraph 2, shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of that paragraph.

Article 19

Where entitlement to a benefit under United States laws is established according to the provisions of Article 17, paragraph 2, the agency of the United States shall compute a pro rata primary insurance amount in accordance with United States laws based on:

I. The person's average earnings credited exclusively under United States laws.

II. The ratio of the duration of the person's periods of coverage completed under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata primary insurance amount.

II

PART IV

Miscellaneous Provisions

Article 20

The Competent Authorities and the agencies of the Contracting States, within the scope of their respective authority, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an Administrative Arrangement.

Article 21

The Competent Authorities of the two Contracting States shall:

(a) Establish Administrative Arrangements for the application of the present Agreement.

(b) Determine their respective liaison agencies whose functions shall be established in the Administrative Arrangement.

(c) Communicate to one another the measures adopted for the application of this Agreement.

(d) Notify one another of laws and regulations which modify those listed in Article 2.

Article 22

1. Disagreements between the Competent Authorities of the two Contracting States regarding the interpretation or application of this Agreement and its Administrative Arrangements shall, as far as possible, be settled by the Competent Authorities.

2. If such a disagreement cannot be resolved within a period of six months, either Contracting State may submit the matter to binding arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Contracting States.

Article 23

1. Correspondence between the Competent Authorities, agencies, liaison agencies and individuals, as well as applications or documents, may be in English or Spanish.

2. Documents and certificates which are presented for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular or other authorities.

Article 24

1. Any application, appeal or other document which according to the laws of a Contracting State must be submitted within a specified period to an agency of that Contracting State, but which is instead submitted within the same period to the agency of the other Contracting State, shall be considered to have been submitted on time. In such case, the agency with which the application, appeal or document has been filed shall indicate the date of receipt on the document and transmit it without delay to the liaison agency of the other Contracting State.

2. Any claim for benefits presented in accordance with the laws of one Contracting State shall be considered as a claim for the corresponding benefits under the laws of the other State, in conformance with conditions and limitations established in an Administrative Arrangement.

Article 25

The benefit of exemptions from or reductions of taxes, stamps, notarial or registration fees or other similar charges provided in the laws of one of the Contracting States for certifications and documents which are required in application of the laws of that State, shall be extended to documents and certifications issued in application of the laws of the other State or of this Agreement.

Article 26

1. Payments due in accordance with this Agreement may be validly made in the currency of the Contracting State whose agency is making the payment.

2. In case provisions restricting the transfer of currency are promulgated in either of the Contracting States, the two States shall immediately adopt measures necessary to guarantee the rights derived from this Agreement.

PART V

Transitional and Final Provisions

Article 27

1. In the application of this Agreement, consideration shall be given to periods of coverage under the laws of either Contracting State which occurred prior to the entry into force of this Agreement, in order to determine the right to benefits under this Agreement; except that neither State shall take into account periods of coverage which occurred prior to the earliest date for which periods of coverage may be credited under its laws.

2. This Agreement shall also apply to events relevant to rights under the laws which occurred prior to its entry into force. This Agreement shall not apply to rights settled by a lump-sum payment.

3. This Agreement shall not establish any claim to payment of a benefit for any period before its entry into force or a lump-sum death benefit if the person died before its entry into force.

4. The application of this Agreement shall not result in any reduction in the amount of benefits to which entitlement was established prior to its entry into force. Benefit rights which interested persons may have acquired prior to the entry into force of this Agreement may be reviewed upon application.

Article 28

1. This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its denunciation is given by one of the Contracting States to the other Contracting State.

2. If this Agreement is terminated by denunciation, rights regarding entitlement to or payment of benefits acquired under it shall be retained. The Contracting States shall make arrangements dealing with rights in the process of being acquired.

Article 29

This Agreement may be amended in the future by supplementary agreements which from their entry into force shall be considered an integral part of this Agreement. Such supplementary agreements may be given retroactive effect if they so specify.

Article 30

The Government of each of the Contracting States shall notify the other of the fulfillment of its statutory or constitutional requirements for the entry into force of this Agreement. The Agreement shall enter into force on the first day of the second month following the exchange of notifications.

In witness whereof, the undersigned, being duly authorized thereto, have signed the present Agreement.

Done at Madrid on September 30, 1986, in duplicate in the English and Spanish languages, both texts being equally authentic.

For the Government of
the United States of America:

For the Government of
Spain:

ADMINISTRATIVE ARRANGEMENT
FOR THE IMPLEMENTATION OF THE AGREEMENT ON SOCIAL SECURITY
BETWEEN THE UNITED STATES OF AMERICA AND SPAIN

Pursuant to the provisions of Article 21(a) of the Agreement between the United States of America and Spain on Social Security, signed September 30, 1986, hereinafter referred to as the "Agreement", the Competent Authorities of both Contracting States have agreed on the following:

Chapter I

General Provisions

Article 1

The terms used in this Administrative Arrangement shall have the same meaning as in the Agreement.

Article 2

1. The liaison agencies referred to in Article 21(b) of the Agreement shall be the following:

   a) For Spain: the National Social Security Institute.

   b) For the United States of America: the Social Security Administration.

2. The liaison agencies designated in the preceding paragraph shall agree on joint procedures, forms and other documents necessary for the application of the Agreement and this Administrative Arrangement.

Chapter II

Provisions on Coverage

Article 3

1. Where the laws of a Contracting State are applicable in accordance with Part II of the Agreement, the agency of that Contracting State, upon request of the employer, employee or self-employed person, shall issue a certificate stating that the employee or self-employed person is covered by those laws. This certificate shall be proof that the named worker is exempt from the laws on compulsory coverage of the other Contracting State.

2. The certificate referred to in paragraph 1 shall be issued

   a) In Spain: by the National Social Security Institute.

   b) In the United States of America: by the Social Security Administration.

3. The agency of a Contracting State which issues a certificate referred to in paragraph 1 shall furnish a copy of the certificate to the liaison agency of the other Contracting State as needed by the latter agency.

4. Where the detachment referred to in Article 5, paragraph 1, of the Agreement is extended for unforeseen reasons beyond 5 years, the employer, with the consent of the employee, may apply to the Competent Authority of the Contracting State from which the employee was sent for special authorization to continue coverage of the employee under the laws of that Contracting State. Upon approval, that Competent Authority shall transmit the application for the extension to the Competent Authority of the other Contracting State for its approval, as provided for in the aforementioned Article.

Chapter III

Special Provisions on Benefits

Article 4

1. An application for benefits presented in accordance with the laws of one Contracting State shall be considered as an application for the corresponding benefits under the laws of the other Contracting State in accordance with Article 24, paragraph 2, of the Agreement, if the applicant presents the application in writing and either requests that it be considered an application under the laws of the other Contracting State or, if the applicant has not specifically restricted the application to benefits under the laws of the first State, provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under the laws of the other Contracting State.

2. The provisions of the Agreement shall apply to an application for benefits only if the application is filed on or after the date the Agreement enters into force.

Article 5

1. The agency of the Contracting State with which an application for benefits is first filed in accordance with Article 4 of this Administrative Arrangement shall inform the liaison agency of the other Contracting State of this fact without delay and provide such evidence and other available information as may be required to complete action on the claim, using forms established for this purpose.

2. The agency of the Contracting State with which an application for benefits has been filed shall verify the accuracy of the information pertaining to the worker, the applicant and his family members. The types of information to be verified shall be agreed upon by the liaison agencies.

3. In the case of an application for disability benefits, the agency shall transmit all available medical evidence concerning the disability.

4. The agency of either of the Contracting States which receives an application filed with an agency of the other Contracting State shall without delay provide the liaison agency of the other Contracting State with such evidence and other available information as may be required to complete action on the claim, using forms established for this purpose.

Chapter IV

Miscellaneous Provisions

Article 6

In accordance with measures to be agreed upon by the Contracting States pursuant to Article 2 of this Administrative Arrangement, the agency of one Contracting State shall, upon request of the agency of the other Contracting State, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

Article 7

The liaison agencies of the two Contracting States shall exchange statistics on the number of certificates issued under Article 3 of this Administrative Arrangement and on the payments made to beneficiaries under the Agreement. These statistics shall be furnished annually in a manner to be agreed upon.

Article 8

1. When, in the judgment of an agency, medical evidence is necessary to determine or review under its laws the disability of an applicant, that agency may request a new medical examination, using a form to be established for such purpose.

2. The costs incurred for the medical examination provided for in the preceding paragraph shall be reimbursed by the agency that requests the examination.

5

Article 9

The agency of each Contracting State shall pay benefits due to beneficiaries under the Agreement without recourse to the agency of the other Contracting State.

Article 10

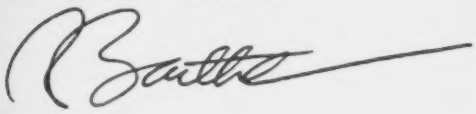
Unless otherwise authorized by the national statutes of a Contracting State, information about an individual which is transmitted in accordance with the Agreement to that Contracting State by the other Contracting State shall be used exclusively for purposes of implementing the Agreement. Such information received by a Contracting State shall be governed by the national statutes of that Contracting State for the protection of privacy and confidentiality of personal data.

Article 11

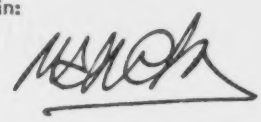
This Administrative Arrangement shall enter into force on the same date as the Agreement and shall have the same period of validity.

Done at Madrid on September 30, 1986, in duplicate in the English and Spanish languages, both texts being equally authentic.

For the Government of
the United States of America:



For the Government of
Spain:



REPORT TO CONGRESS
TO ACCOMPANY THE SOCIAL SECURITY AGREEMENT
BETWEEN THE UNITED STATES AND SPAIN

I. INTRODUCTION

The social security agreement between the United States and Spain is intended to provide limited coordination of the old-age, survivors, and disability insurance (OASDI) programs of the two countries. The agreement is similar in content and objective to agreements already concluded between the United States and Belgium, Canada, Italy, Norway, Sweden, Switzerland, the United Kingdom and West Germany.

The U.S.-Spanish agreement consists of two separate instruments: (1) a principal agreement setting forth the basic rules for coordinating the two countries' social security systems; and (2) an administrative arrangement establishing policies and procedures to implement the principal agreement. These two documents were signed by representatives of the U.S. and Spanish Governments on September 30, 1986, and are now being submitted to Congress for review in accordance with Section 233(e) of the Social Security Act.

The U.S.-Spanish agreement would eliminate dual coverage, the situation that now exists when a person from one country works in the other country and is covered under and required to pay contributions to the social security systems of both countries for the same work. In addition to eliminating dual coverage, the agreement would help prevent situations where workers suffer a loss of benefit rights merely because they have divided their careers between the two countries.

Accompanying this report are paragraph-by-paragraph explanations of the provisions of the principal agreement (Annex A) and related administrative arrangement (Annex B). A report required by Section 233 (e)(1) of the Social Security Act on the effect of the agreement on income and expenditures of the U.S. Social Security program and the number of individuals affected by the agreement is also included (Annex C).

II. STATUTORY REQUIREMENTS

Section 233(c)(1) of the Social Security Act requires that international agreements concluded pursuant to that section provide for the elimination of dual coverage of the same work under the social security systems of the United States and the other country which is a party to the agreement, and for combining credits earned by a worker under the two systems for benefit eligibility purposes. In addition, the law stipulates that when eligibility for U.S. Social Security benefits is established on the basis of combined credits, the amount of the benefit payable must be based on the proportion of the worker's periods of coverage completed under title II of the Social Security Act. The U.S.-Spanish agreement includes these required provisions.

III. COVERAGE PROVISIONS

In conformity with Section 233(c)(1)(B) of the Social Security Act, Part II of the principal agreement sets forth rules designed to eliminate dual coverage and taxation of the same work under the U.S. and Spanish social security systems.

A. Rules Governing Employees

The rules which apply to employed persons provide that dual coverage under the laws of the United States and Spain would be eliminated generally by maintaining an employee's coverage under the system of the country where the work is performed and exempting the employee from compulsory coverage under the system of the other country.

Special rules would apply, however, for employees who are temporarily transferred by their employer in one country to work in the other country for a period of five years or less. In these cases, an employee who was covered in one country before his transfer would continue to be covered under that country's system and would be exempt from coverage in the other country. Thus, a person working in the United States who is temporarily transferred by his employer to Spain would only be covered under and pay contributions to the U.S. program, and he and his employer would be relieved of the additional burden of paying social security contributions to the Spanish program.

Other rules set forth in this Part would apply to persons employed by the Governments of the two countries and to persons employed in international air and ship transportation.

B. Rules Governing Self-Employed Persons

Part II also contains rules applicable to persons whose earnings from self-employment would be subject to compulsory coverage and contributions under the laws of both countries. Under these rules, a self-employed resident of Spain whose earnings would otherwise be dually covered will be covered only under the laws of Spain. A dually covered U.S. resident would be covered only under U.S. laws.

IV. BENEFIT PROVISIONS

Part III of the principal agreement establishes the basic rules for determining entitlement to and the amount of U.S. and Spanish benefits for persons who have worked in both countries. These benefit provisions are included pursuant to Sections 233(c)(1)(A) and (C) of the Social Security Act.

A. Provisions Applicable to the United States

1. Totalization of Periods of Coverage

Under the rules which apply to the United States, if a worker has credit for at least 6 quarters of coverage under the U.S. Social Security system, but not enough credits to qualify for a U.S. benefit, the worker's coverage credits from both countries could be totalized (i.e., combined) to permit him or her to qualify for a partial U.S. benefit. The benefit amount of a person who qualifies based on totalized credits would be proportional to the amount of coverage completed in the United States.

2. Converting Periods of Coverage

Part III of the agreement also establishes procedures to be followed in converting periods of coverage under the Spanish system into equivalent periods under the

U.S. system. Periods of coverage under the U.S. Social Security program are measured in terms of calendar quarters, while Spanish periods of coverage are measured in days of contributions. Under the agreement, the United States would credit one quarter of coverage in a calendar year for every 91 days of contributions certified for that year under the Spanish system. The United States, however, would not credit days of contributions under Spanish laws which fall within quarters of coverage already credited under the U.S. system.

2. Computation of U.S. Totalization Benefit Amounts

The amount of a U.S. benefit for which a person may qualify based on totalized periods of coverage depends on both the duration of the worker's coverage under U.S. Social Security and the level of his earnings. A detailed description of the totalization benefit computation procedure is contained in regulations of the Department of Health and Human Services (20 CFR 404.1918). The first step in the procedure is to compute a theoretical benefit amount as though the worker had worked a full coverage lifetime (i.e., a full career) under U.S. Social Security at the same earnings level as during his actual periods of U.S. covered work. The theoretical benefit is then prorated to reflect the proportion of a coverage lifetime the worker completed under the U.S. program. A coverage lifetime is defined in the regulations as the number of the worker's benefit computation years, i.e., the years which must be used in determining a worker's average earnings under the regular U.S. national computation method.

B. Provisions Applicable to Spain

1. Spanish Benefits

Spain provides old-age, survivors and disability benefits through several programs. A general social security system covers the majority of workers in the private sector, and numerous special systems cover other workers in specific occupational categories. In order to qualify for Spanish benefits, a worker must meet the applicable eligibility standards, including minimum length-of-coverage and recency-of-work requirements that are specified for each type of benefit. Benefits vary in amount depending on the length of the worker's covered employment or self-employment under the Spanish system, as well as the level of the worker's earnings.

2. Totalization of Periods of Coverage

The totalization provisions of the agreement apply to the Spanish social security laws which govern the general and special social security systems and which provide benefits on account of retirement or on account of death or disability not resulting from a work-related accident or illness.

Under the agreement, if a worker has at least one year of Spanish coverage, Spain would add U.S. quarters of coverage to periods of Spanish coverage in order to determine whether the worker meets the applicable minimum coverage and recency-of-work requirements for benefit eligibility under Spanish law. Spain would credit 91 days of coverage for each quarter of coverage certified by the United States, less any days within the quarter that are already credited under Spanish law.

Where eligibility is established based on combined U.S. and Spanish credits, Spain would compute a theoretical benefit amount as if the worker's U.S. periods of coverage had been completed under Spanish law. To determine the amount actually payable, the theoretical amount would be prorated by multiplying it by the ratio of the periods of coverage credited under Spanish law to the total periods credited in both countries.

C. Benefit Portability

Section 233(c)(2) of the Social Security Act permits agreements to contain provisions suspending the application of the alien nonpayment provisions of the Social Security Act (Section 202(t)) for persons residing in a foreign country with which the United States has an agreement in force. Spanish nationals outside the United States, including those residing in Spain, are already exempt from the nonpayment provisions of section 202(t)(1) in accordance with section 202(t)(2). However, citizens of other countries who reside in Spain may not be. The agreement, therefore, provides an exemption from the nonpayment provisions of section 202(t)(1) for insured persons and their dependents or survivors, regardless of their citizenship, if they reside in Spain.

Under section 202(t)(11), which was added by the Social Security Amendments of 1983, benefits generally may not be paid to nonresident aliens who first become eligible for title II dependent or survivor benefits after December 31, 1984, unless they satisfy certain U.S. residency requirements, or they are citizens or residents of a country with which the United States has a totalization agreement in force. Once the U.S.-Spanish social security agreement enters into force, citizens or residents of Spain will no longer be subject to this nonpayment provision.

The agreement would also guarantee that persons who reside in the United States could qualify for and receive Spanish benefits without restriction based on their nationality or place of residence. Diplomatic notes exchanged in 1965 and 1966 between the United States and Spain which provide for the payment of Spanish benefits to U.S. nationals while residing in third countries would not be affected.

V. OTHER PROVISIONS

Section 233(c)(4) of the Social Security Act authorizes agreements to contain other provisions not inconsistent with title II of the Act which are appropriate to carry out the purposes of the agreements. In accordance with this provision, the principal agreement and administrative arrangement contain a number of articles designed to permit the United States or Spain to render free or reimbursable assistance to the other country in implementing the agreement.

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